

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL LEAGUE  
RETIRED PLAYERS' CONCUSSION  
INJURY LITIGATION

No. 2:12-md-02323-AB

MDL No. 2323

THIS DOCUMENT RELATES TO:

Hon. Anita B. Brody

Amon Gordon, Concussion Settlement ID No.  
260006736

**SUPPLEMENTAL BRIEFING IN OBJECTION TO  
SPECIAL MASTER'S OCTOBER 11, 2018 RULING**

Amon Gordon respectfully submits this reply to the NFL's Response in this matter and again requests the Court to intervene to correct a misapplication of the terms of the Settlement Agreement.

The terms of the Settlement Agreement taken as a whole show Mr. Gordon's thrice-approved Pre-Effective Date claim should be approved a fourth time. However, if the Special Master's Determination<sup>1</sup> in this case is permitted to stand, that means that the Settlement Agreement has not differentiated treatment of Pre-effective Date Claims from Post-Effective Date Claims, which is certainly not true. There is no doubt that the Settlement Agreement intended to and does treat Pre-Effective Date Qualifying Diagnoses differently than Post-Effective Date Qualifying Diagnoses. The Settlement Agreement has consistent separate provisions for these distinctly different claims. However, here, the Special Master's application of the Settlement Agreement's terms nullifies the difference. A Pre-effective Date Diagnosis must be made by *one* Board certified neurologically trained specialist physician. Section 6.3(d).

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<sup>1</sup> Ex. 1

But, here, the Special Master's Determination requires *two* specialists: a Board certified neurologically trained physician and a neuropsychologist who follows the Baseline Assessment Program ("BAP") guidelines. When the Pre-effective Date diagnoses were made, there were no BAP Guidelines and a neuropsychologist was never required.

The Special Master's determination shows the Special Master's error in analyzing Mr. A.G.'s claim when following the path to Exhibit 1 to the Settlement Agreement (the Injury Definitions), when he acknowledges the next step would be Section 6.4. (See. Section B, p. 3, attached hereto as Exhibit 2). Section 6.4 requires a review of the diagnosis by a member of the Appeals Advisory Panel for a diagnosis made prior to the Effective Date. What the Special Master mistakenly omits from the analysis is the following excerpt from Section 6.4:

For the avoidance of any doubt, the review of whether a Qualifying Diagnosis is based on principles generally consistent with the diagnostic criteria set forth in Exhibit 1 (Injury Definitions) ***does not require identical diagnostic criteria, including without limitation, the same testing protocols or documentation requirements.***

(Settlement Agreement, Section 6.4(b))(Emphasis added.) When Mr. A.G.'s Pre-Effective Date Claim was approved by the Claims Administrator, the Auditor of the Claims Administrator and then, a second audit by the Advisory Physician, all three evaluations of the Claim were made by using the injury definition for the Qualifying Diagnosis<sup>2</sup>, and Mr. A.G.'s claim was approved. On appeal to the Special Master, the NFL Parties asked the Special Master to apply the Post-Effective Date Settlement Agreement Requirements and ***require*** neuropsychological findings generally consistent with the Post-Effective Date requirements. However, that newly added requirement by the NFL Parties of a neuropsychological test that is generally consistent with the

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<sup>2</sup>

Exhibit 2 has detailed requirements to meet the "generally consistent" for post-Effective date claims, and Exhibit 2 (Section 1(b) refers diagnoses made pre-Effective Date back to Section 6.3(d)

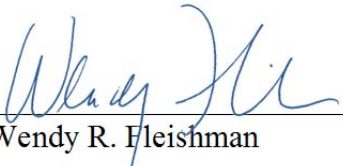
Post-Effective Date requirements was never part of the Settlement Agreement requirements for the Pre-Effective Date Claim.

Mr. A.G. therefore asks this Court to overturn the Special Master's determination and reinstate the award. Based on the NFL Parties' improper urging, the Special Master wrongly applied Post-Effective Date requirements and generally consistent terminology (and thus the same diagnostic criteria and protocols). That additional requirement violates the spirit and terms of Section 6.4 and the differences afforded to Pre-Effective date diagnoses throughout the Settlement Agreement. The Special Master's ruling negates the above-quoted terms from Section 6.4 of the Settlement Agreement that are in place to protect a player who received a diagnosis prior to the Effective Date of the Settlement Agreement.

Therefore, Claimant A.G. respectfully requests this Court to reinstate his monetary award for his Qualifying Diagnosis of 1.5.

Respectfully submitted,

Dated: November 27, 2018

By:   
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